

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

ID No.

Telephone Number:

Refer Reply To:

CC:CORP:02

PLR-146347-09

Date:

February 05, 2010

LEGEND

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Seller =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
a =
Accounting Firm =

Dear :

This letter responds to your request, dated October 9, 2009, as submitted by your authorized representatives on behalf of Parent, requesting a ruling, under Treas. Reg. § 1.1502-75(b), that Sub 8 has joined in the making of the initial consolidated return filed by Parent for the taxable year ended Date 3. The information submitted in that request and in later correspondence is summarized below.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the taxpayer's ruling request. Verification of information, representations, and other data may be required as part of the audit process.

SUMMARY OF FACTS

Parent was newly formed on Date 1. On Date 2, Parent acquired all of the stock of Sub 1 through Sub 7 from Seller. Sub 8 is a holding company that owns an a% interest in a foreign joint venture. The other joint venture partners objected to and blocked Seller's legal transfer of Sub 8's stock to Parent. In response, Seller and Parent agreed that Seller would hold the Sub 8 stock for Parent's benefit.

On Date 4, Parent timely filed a consolidated income tax return for the short period beginning Date 1 and ending Date 3, including the income and deductions of Sub 1 through Sub 8 for the period beginning the day after Date 2 and ending Date 3.

Parent's Form 1120 included an Affiliations Schedule, Form 851, identifying Sub 1 through Sub 7; and Forms 1122 for each of Sub 1 through Sub 7.

Based upon its determination that it did not have legal ownership of Sub 8, Parent's tax department concluded that Sub 8 could not join in the making of Parent's initial consolidated income tax return for the taxable year ended Date 3. Parent did not include a Form 1122 for Sub 8, nor did it include Sub 8 on the Affiliations Schedule, Form 851. Parent, however, did include the income and deductions associated with Sub 8 on its consolidated return for the taxable year ended Date 3 (and for taxable years thereafter) because it believed it had acquired the financial rights and responsibilities of Sub 8.

On Date 5, Parent received notification from Seller that Sub 8 had not filed a tax return for the taxable year ended Date 3. Parent retained Accounting Firm, which determined that Parent had acquired beneficial ownership of Sub 8 on Date 2.

REPRESENTATIONS

Parent has made the following representations:

- (1) Parent acquired beneficial ownership of Sub 8 on Date 2.
- (2) Parent and each of Sub 1 through Sub 8 were eligible to file a consolidated federal income tax return for the taxable year ended Date 3. For the taxable year ended Date 3, Parent owned directly stock meeting the requirements of section 1504(a)(2) in each of Sub 1 through Sub 8.
- (3) For the taxable year ended Date 3, and for all taxable years thereafter, all of the income and deductions of Sub 8 were included in the consolidated federal income tax return filed by Parent.
- (4) Sub 8 did not file a separate income tax return for the taxable year ended Date 3 or for any taxable year thereafter.
- (5) Sub 8 was not included on the Affiliations Schedule, Form 851, for the taxable year ended Date 3. Sub 8 was included on the Affiliations Schedule, Form 851, for taxable years thereafter.
- (6) As of the date of this request, the Internal Revenue Service has not contacted Parent about the failure to timely file a Form 1122 with respect to Sub 8 for the taxable year ended Date 3.

APPLICABLE LAW

Treas. Reg. § 1.1502-75(a)(1) provides, in part, that an affiliated group of corporations that did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation that has been a member of the group during any part of the taxable year for which the consolidated return is to be filed consents to the regulations under section 1502, in accordance with Treas. Reg. § 1.1502-75(b). If a group wishes to exercise its privilege of filing a consolidated return, such return must be filed not later than the last day prescribed by law (including extensions of time) for the filing of the common parent's tax return.

With regard to a corporation's consent for a group's first consolidated year, Treas. Reg. § 1.1502-75(b)(1) provides, as a general rule, that the corporation's consent shall be made by such corporation joining in the making of the consolidated return for such year. A corporation shall be deemed to have joined in the making of such return if it files a Form 1122 in the manner specified in Treas. Reg. § 1.1502-75(h)(2).

Treas. Reg. § 1.1502-75(h)(2) provides that if a group wishes to file a consolidated return for a taxable year, a Form 1122 must be executed by each subsidiary. For taxable years relevant to this ruling request, the group must attach to the consolidated return for the taxable year either executed Forms 1122 or unsigned copies of the completed Forms 1122 (and retain the signed originals in its records in the manner required by Treas. Reg. § 1.6001-1(e)). Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding taxable year.

Treas. Reg. § 1.1502-75(b)(2) provides that if a member of the group fails to file Form 1122, the Commissioner may under the facts and circumstances determine that such member nevertheless has joined in the making of a consolidated return by such group. Factors that the Commissioner will take into account in making this determination include: (i) whether or not the income and deductions of the member for such taxable year were included in the consolidated return; (ii) whether or not a separate return was filed by the member for that taxable year; and (iii) whether or not the member was included in the affiliations schedule, Form 851. If the Commissioner determines, under the facts and circumstances, that the member has joined in the making of the consolidated return, such member will be treated for purposes of Treas. Reg. § 1.1502-75(h)(2) as if it had filed a Form 1122 for such year.

Treas. Reg. § 1.1502-75(b)(3) provides that if any member has failed to join in the making of a consolidated return under either Treas. Reg. § 1.1502-75(b)(1) or (b)(2), then the tax liability of each member of the group shall be determined on the basis of separate returns unless the common parent corporation establishes to the Commissioner's satisfaction that the failure of such member to join in the making of the

consolidated return was due to a mistake of law or fact, or due to inadvertence. In such case, such member shall be treated as if it had filed a Form 1122 for such year for purposes of Treas. Reg. § 1.1502-75(h)(2), and thus joined in the making of the consolidated return for such year.

RULING

Based solely on the information submitted and the representations made, we rule that Sub 8 will be treated under Treas. Reg. § 1.1502-75(h)(2) as if it had filed a Form 1122 with Parent's consolidated federal income tax return for the taxable year ended Date 3, and thus will be treated as having joined in the making of the consolidated return for such year. Treas. Reg. § 1.1502-75(b)(3).

Within 45 days of the date of this letter, Parent shall file an amended return for the taxable year ended Date 3 (and subsequent years, if necessary) to include Sub 8 on Parent's Form 851 and to include a Form 1122 and the necessary statements and schedules for Sub 8.

PROCEDURAL STATEMENTS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of any other aspect of any transaction or item discussed or referenced in this letter, or about the tax treatment of any condition existing at the time of, or effects resulting from, any transaction or item that is not specifically covered by the above ruling. Further, no opinion is expressed on whether Parent's interest in the stock of Sub 8 met the requirements of section 1504(a)(2).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Frances L. Kelly
Assistant to the Branch Chief, Branch 2
Office of Associate Chief Counsel (Corporate)